

Law vol. 27

T H E
K I N G S T O N C A U S E
Impartially stated and fully considered,
CONTAINING
A RECAPITULATION of the FACTS,
AND A
SUMMARY of all the ARGUMENTS,
USED FOR AND AGAINST
Her Grace the Dutchess Dowager of KINGSTON,

W I T H
The SENTENCE of the ECCLESIASTICAL COURT
and a COPY of the BILL of INDICTMENT, found by
the Inquest of the GRAND JURY for the COUNTY of
MIDDLESEX.

TO WHICH ARE ADDED
The GENUINE SPEECHES of LORD MANSFIELD, and
several other noble LORDS, relative to the Place and Man-
ner of TRIAL.

I L L U S T R A T E D
With Sir WILLIAM BLACKSTONE's Commentary on the
Suit of Matrimonii Jactitationii, the Sin and Unlawfulness
of Bigamy, and the consequent Punishment of the Offence.

L O N D O N,
Printed for J. W H E B L E, No. 22, Fleet-Street;

M D C C L X X V I.

THE KINGSTON GAUST

Importantly fitted and fully equipped

A RECOMMENDATION OF THE FACTS

AND A

STANDARD OF THE ARTS AND

INDUSTRY AND AGAINST

THE GREAT DEBATE OF KINGSTON

WITH

THE REVENUE OF THE KINGDOM

AND

THE REVENUE OF THE KINGDOM



THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

THE REVENUE OF THE KINGDOM

~~_____~~
~~_____~~
~~_____~~
T H E

KINGSTON CAUSE,

IMPARTIALLY stated, and FULLY
considered.

Notwithstanding the Cause at present in Agitation between her Grace the Dutchess Dowager of *Kingston*, and the Relations of the late Duke, has made so much Noise in the World that it has reached the Ears of almost every one who takes the Trouble of reading the public Prints; yet as the Case has been variously related, and stated in different Points of View, as best suited the Wishes or Interests of the

B different

different Parties, a fair and impartial State of the Cause, with all the Arguments used on either Side of the Question, seems still to be wanting ; and it is this that, in the Course of the following Sheets, we shall present to the Public.

In the first Place it may not be improper to give a short Recapitulation of the Facts which have occasioned this extraordinary Dispute, as it is necessary for the Reader to see the Chain and Connections of them, before he is introduced to those Arguments which have been alledged respectively in Favour of the contending Parties.—The Lady, whose maiden Name was *Elizabeth Chudleigh*, but now called Dutches Dowager of *Kingston*, stands charged at this Time, by the Inquest of the Grand Jury for the County of *Middlesex*, with the Crime of Bigamy, for first being married, in the Year 1744, to the Honourable *Augustus John Hervey*, and after-

terwards being married to his Grace *Evelyn*
Pierrepont, Duke of *Kingston*, in the Year
 1769, and during the Life-time of her
 first Husband, who has lately succeeded
 to a Peerage. This Gentleman avowedly
 and openly declared, from Time to Time,
 between the Periods of 1744 and 1769, that
 the Honourable *Elizabeth Chudleigh* was his
 lawful Wife, and the Honourable Miss
Chudleigh, on her part, avowedly and
 openly declared the Contrary; and in the
 Year 1769, instituted a Suit against him in
 the Spiritual Court of *London*, * in order
 to

This Cause was of that Sort which Judge
Blackstone says, is one of the first and principal of Matri-
 monial Causes; and is called *Causa jactitationis Matrimonii*;
 instituted when one of the Parties boasts or gives out
 that he or she is married to the other, whereby
 a common Reputation of their Matrimony may
 ensue; on this Ground the Party injured may libel
 the other in the Spiritual Court, and unless the De-
 fendent undertakes, and makes out a Proof of the
 actual

to bring the Matter to an unquestionable Decision. The Lady prevailed, and obtained a Sentence in her Favour †, which was considered

actual Marriage, he or she is enjoined perpetual Silence upon that Head, which is the only Remedy the Ecclesiastical Courts can give for this Injury,
Blackstone, Book iii. p. 93.

† This Sentence was as follows :

Extracted from the Registry of the Consistory Court of London.

In the Name of GOD, Amen.—We, *John Bettesworth*, Doctor of Laws, Vicar General of the Right Reverend Father in God, *Richard*, by divine Permission, Lord Bishop of *London*, and Official Principal of the Consistorial and Episcopal Court of *London*, having seen, heard, and understood, and fully and maturely discussed the Merits and Circumstances of a certain Cause of Jactitation of Marriage, which was lately controverted, and as yet remains undetermined before us in Judgment, between the Honourable *Elizabeth Chudleigh*, of the

dered as solemn, final, and irrevocable ; and soon after, in the Year 1769, married the Duke

the Parish of St. Margaret, Westminster, in the County of Middlesex, Spinster, the Party, Agent and Complainant, of the one Part, and the Right Honourable Augustus John Hervey, of the Parish of St. James, Westminster, in the County of Middlesex, and Diocese of London, Batchelor, falsely calling himself the Husband of the said Honourable Elizabeth Chudleigh, the Party accused and complained of on the other Part, and we rightly and duly proceeding therein, and the Parties aforesaid lawfully appearing before us by their Proctors respectively, and the Proctor of the said Honourable Elizabeth Chudleigh, praying Sentence to be given, and Justice to be done to his Party, and the Proctor of the said Right Honourable Augustus John Hervey, also earnestly praying Sentence and Justice to be done to his said Party. And we having carefully looked into, and duly considered of the whole Proceedings, had and done before us in the said Cause, and observed, what by Law ought to be observed in this Behalf, have thought fit, and do thus think fit to
the

Duke of *Kingston*, who, dying in the Year 1773, left her his Executrix, and bequeathing her the Bulk of his Immense Fortune.

The
the giving and promulging our definitive Sentence, or final Decree in this same Cause, in Manner and Form following: (To wit,) Forasmuch as by the Acts enacted, alledged, exhibited, propounded, proved, and confessed in this Cause, we have found, and clearly discovered, that the Proctor of the said Honourable *Elizabeth Chudleigh* hath fully and sufficiently founded, and proved his Intention deduced in a certain Libel and Allegation, and other Pleadings and Exhibits given in, exhibited, and admitted on her Behalf in this same Cause, and now remaining in the Registry of this Court (which Libel and Allegation, and other Pleadings and Exhibits, we take, and will have taken as if herein repeated and inserted for us to pronounce, as hereinafter we shall pronounce) and that nothing, at least effectual in Law, hath on the Part and in Behalf of the said Right Honourable *Augustus John Hervey*, been excepted, deduced, exhibited, propounded, proved and confessed in this same Cause, which may or
ought

The Duke of *Kingston* had a Sister named
Lady *Frances*, who married — *Meadows*.

Annals

In

ought in any wise to defeat, prejudice or weaken
the Intention of the said Honourable *Elizabeth Chud-*
leigh, deduced as aforesaid; and particularly that
the said Right Honourable *Augustus John Hervey* hath
totally failed in the Proof of his Allegation given in,
and admitted in this Cause, whereby he pleaded and
propounded a pretended Marriage to have been solemn-
ized between him and the said Honourable *Elizabeth*
Chudleigh, Spinster. And therefore we, *John Bettes-*
worth, Doctor of Laws, the Judge aforesaid, first
calling upon God, and setting him alone before our
Eyes, and having heard Counsel in this Cause, do
pronounce, decree, and declare, that the said Ho-
nourable *Elizabeth Chudleigh*, at and during all the
Time mentioned in the said Libel, given in and ad-
mitted in this Cause, and now remaining in the
Registry of this Court, was, and now is, a Spinster,
and free from all Matrimonial Contracts, or Espousals
(as far as to us as yet appears) more especially with
the said Right Honourable *Augustus John Hervey*,
and that the said Right Hon. *Augustus John Hervey*,
notwithstanding the Premises, did, in the Years and
Months

In Right of this Lady, the Family, on the
decease of the Duke, filed a Bill in Chancery
against

Months libellate, wickedly and maliciously boast,
and publickly assert, (though falsely) that he was
contracted in Marriage to the said Honourable *Elizabeth Chudleigh*, or that they were joined or con-
tracted together in Matrimony: Wherefore we do
pronounce, decree, and declare, that perpetual Si-
lence must and ought to be imposed and enjoined the
said Right Honourable *Augustus John Hervey*, as to
the Premisses libellate, which we do impose and
enjoin him by these Presents, and we do decree the
said Right Honourable *Augustus John Hervey* to be ad-
monished to desist from his boasting and asserting,
that he was contracted to, or joined with the said
Honourable *Elizabeth Chudleigh* in Matrimony, as
aforesaid; and we do also pronounce, decree, and de-
clare, that the said Right Honourable *Augustus John
Hervey* ought, by Law, to be condemned in lawful
Expences made, or to be made, in this Cause, on
the Part and Behalf of the said Honourable *Elizabeth
Chudleigh*, to be paid to the said *Elizabeth Chudleigh*,
or her Proctor; and accordingly we do condemn
him

against her Grace, as being the Wife of the Honourable *Augustus John Hervey, Esq.* calling herself Dutchess Dowager of *Kingston*, in order to set aside the Jointure and Will, settled and demised by the Duke in her Favour, declaring that they should produce

him in such Expences which we tax at, and moderate to, the Sum of One Hundred Pounds of lawful Money of *Great Britain*, besides the Expences of a Monition for Payment in this Behalf, by this our definitive Sentence, or final Decree, which we read and promulge by these Presents.

J. BETTESWORTH.

Arthur Collier,

Peter Calvert,

William Wynne.

This Sentence was read, promulged, and given by the within named Vicar General, and Official Principal, on *Friday* the tenth Day of *Februray* in the Year of our Lord, One Thousand, Seven Hundred, Sixty-nine, in the Dining-room adjoining to

C

the

duce Evidence to prove that a prior Marriage had been actually solemnized with the said Honourable *Augustus John Hervey*; and that the Sentence in the Spiritual Court was obtained by Collusion and Suppression of Witnesses. The Lady nevertheless pleaded that Sentence, which Plea was admitted by the Lord Chancellor, his Lordship deeming it a final Decree.

In regard to the Bill of Indictment, the Dutches claiming Privilege as a Peerefs, the Bill was removed from *Hicks's-Hall* to the Bar

the Common Hall of *Doctors Commons*, situate within the Parish of *St. Benedict*, near *Paul's Wharf, London*; there being then and there present the Witnesses specified in the Acts of Court, which I attest.

MARK HOLMAN, Notary Publick,
Deputy Register.

MARK HOLMAN,
Deputy Register.

Bar of the House of Lords, before whom she is to take her Trial on the 28th of *February* 1776, in *Westminster-Hall*. Her Pursuers having since amended their Bill, but the Court of Chancery will not decide upon the Merits of the Cause till after the Issue of the Trial before the Lords.--It is necessary to add that her supposed Husband, the present Earl of *Bristol*, has not in the least interfered in these Proceedings since the Decision of the Ecclesiastical Court ; and that there are no Children by that Marriage, if any marriage were actually solemnized.

The following is an authentic Copy of the
Bill of Indictment :

MIDDLESEX.

THE Jurors for our Sovereign Lord
the now King, upon their Oath,
present, that *Elizabeth*, the Wife of
Augustus John Hervey, late of the

C 2

Parish

Parish of *St. George, Hanover-Square*, in the County of *Middlesex*, Esq. on the eighth Day of *March*, in the Ninth Year of the Reign of our Sovereign Lord, *George the Third*, now King of *Great Britain*, and so forth, being then married, and then the Wife of the said *Augustus John Hervey*, with Force and Arms, at the said Parish of *St. George, Hanover-Square*, in the said County of *Middlesex*, feloniously did marry, and take to husband, *Evelyn Pierrepont*, Duke of *Kingston*, (the said *Augustus John Hervey*, her former Husband, being then alive) against the Form of the Statute in such Case made and provided, and against the Peace of our said Lord the King, his Crown and and Dignity. And the said Jurors for our said Sovereign Lord, the now King, upon their Oath aforesaid, further presented,

sent, that the said *Elizabeth*, heretofore
 (to wit) on the fourth Day of *August*,
 in the Eighteenth Year of the Reign of
 our late Sovereign Lord, *George* the
 Second, late King of *Great Britain*,
 and so forth, at the Parish of *Lainston*,
 in the County of *Southampton*, by the
 Name of *Elizabeth Chudleigh*, did
 marry the said *Augustus John Hervey* ;
 and him the said *Augustus John Hervey*,
 then and there, had for her Husband ;
 and that the said *Elizabeth* being
 married, and the Wife of the said
Augustus John Hervey, afterwards
 (to wit) on the eight Day of *March*,
 in the Ninth Year of the Reign of our
 said Sovereign Lord, *George* the Third,
 now King of *Great Britain*, and so
 forth, with Force and Arms, at the said
 Parish of *St. George, Hanover-Square*,
 in the said County of *Middlesex*, felon-
 niously

niouſſy did marry, and take to huſband,
 the ſaid *Evelyn Pierrepont*, Duke of
Kingſton, (the ſaid *Augustus John*
Hervey, her former Huſband, being
 then alive) againſt the Form of the
 Statute in ſuch Caſe made and pro-
 vided, and againſt the Peace of our
 ſaid Sovereign Lord, the now King,
 his Crown and Dignity.

The SPEECHES and RESOLUTIONS of the PEERS,
relative to the Place, Manner, and
Time of Trial.

ON the 20th of *November*, the Order of the Day appointed by the House of Lords for taking into Consideration the Affair relative to the trial of the Dutcheſs of *Kingſton*, Lord *Mansfield* roſe, and in a very eloquent and learned Speech, ſtated to the Houſe ſhortly his Opinion of the Caſe, in the Light it preſented itſelf in that Stage. —His Lordſhip firſt obſerved, that he had ſome knowledge of the Affair in his juridical Capacity, that the preſent Dutcheſs of *Kingſton*, then paſſing as the Wife of *Auguſtus John Hervey*, had taken up neceſſaries ;

cessaries ; that the Cause coming in that Form before him, and the Marriage being specifically proved, Mr. *Hervey* was deemed the Husband, and was of course subjected to the Payment of the specific Demand. So it happened on some other Occasions afterwards, where the Determination of the Court of King's Bench was looked upon as Decisive. So far (says his Lordship) we are to take it for granted, that the present Person, calling herself Dutches's Dowager of *Kingston*, was married to *Augustus John Hervey*, now Earl of *Bristol*. But, my Lords, when we take this for granted, we must look no further than the mere Facts as I have stated them. We are since judicially informed, that the Marriage on which those Determinations were founded was in reality no Marriage. The Ecclesiastical Court, upon the most mature and full Hearing, has determined that the Parties were not legally married. This I look
upon

upon as a Point not to be got over in the future Progress of this Business. For my Part, I recollect no Instance in which the Determination of the Ecclesiastical Court has not been final and conclusive. I think it ought to be so on the present Occasion ; but I will not attempt to lead your Lordships on a Point of such real Consequence. From this general State of the Question it may be worth your Lordships while to look forward to the Consequences. It will be understood by all *Europe*, should your Lordships think proper to have the Dutchess of *Kingston* tried in the Hall, a Lord High Steward appointed, and all the Formalities consequent on that Mode of Trial adopted ; it will be understood, I say, that something very serious may be the Consequence of her possible Condemnation ; but let us, my Lords, before we sanction all those solemn Solemnities, look forward to the probable Consequences. In the first Place, though she should be found guilty of the Charge of

D Bigamy,

Bigamy, as a Peereſs, by an expreſs Act of Parliament, the Punishment annexed to Felony with Benefit of Clergy, that of being burnt in the Hand, is remitted. This is, I preſume, ſo far as public Example, or with a View to deter others, totally unneceſſary. The next Object is to do juſtice to the Proſecutor, ſo far as his Property is concerned ; public Juſtice requires that he ſhould have every fair and legal Chance of recovering it ; but ſo far as it regards the Proſecutor, let us ſee how the preſent propoſed Trial promiſes to be the Means of doing him juſtice. We will ſuppoſe the Culprit convicted of the Charge brought againſt her, what End will that answer ? Her hereditary Fortune is not aimed at ; her real Eſtate will not be forfeited ; and her perſonal Fortune, if ſhe is proved Counteſs of *Briſtol*, will certainly come, as of right, to her ſuppoſed Huſband, the preſent Earl. His Lordſhip then entered
into

into a long Discussion to prove on how many different Occasions the Attorney General had a right to grant a *Noli Prosequi*, to stop criminal Prosecutions. He shewed the present was one of them, because it was a private Prosecution. He laid it down as Law, that the Attorney General had a Power of stopping all Prosecutions on Actions, for which private Reputation might be sought. The present was one of them, he said. The King might likewise do the same, under his Sign Manual. So he might in other Instances, by the Authority of himself and Council.

Such were the general Ideas his Lordship threw out as leading to his Motion.—He observed, that the present Business was such, that it was not necessary it should encroach on the national Business, either before or after the *Christmas* recess.—He should

therefore move, that *Elizabeth*, commonly called *Dutchess of Kingston*, should be tried at the Bar of that House on *Monday* the 18th of *December* next; that the Lords should be summoned two Days previous thereto, and every Day during the Trial; that their Lordships would attend in their Robes, and not depart the House without Leave; that the Usher of the Black Rod should keep the next Door to where he sits locked, and should keep his Lobby for the Reception of the Prisoner; that the Prisoner shall be at Liberty to cross-examine the Witnesses *viva voce*; that Proclamation be made every Day, that whoever knows any Thing touching the Matter in issue, shall come into Court, and fairly and fully disclose the same; and that the Oath administered to the Witnesses on the Trial, shall be in the following Words:—" You shall true Answers make to all such Questions,

as

as shall be asked of you, touching the Matter in Question, and tell the Truth, the whole Truth, and nothing but the Truth, so help you God, and the Contents of this Book."—Some other Formalities of still less moment were mentioned by his Lordship; and the Motions being all agreed to without Opposition, the House adjourned about four o'Clock.

The Dutcheſs of *Kingſton* having been taken ſuddenly ill on *Sunday* the 2d Day of *December*, when at the *Chapel Royal*, her Phyſicians, on Account of the early Day appointed for her Trial, were ordered to attend, and make a Report of the State of her Health; which the Lords received, and ordered at the ſame Time a Report of the Committee, which had been previously appointed for taking into Conſideration the Manner and Method of regulating the Proceedings to be obſerved at her Trial.

As

As soon as the Doctors *Schombergh*, *Warren*, and *Faalke*, had retired from the Bar, the Order of the Day for receiving the Report from the above-mentioned Committee was read; and the first Resolution they came to, being read a second Time, a Pause of a Minute intervened before any Person rose to speak to it; which had the Appearance that it was expected the disagreeable Task of rising to condemn the Proceedings of so very respectable a Committee, would have originated rather from some other than the noble and learned Lord who first took the Lead in this Business, and against whose Sentiments this Resolution so strongly militated. The Resolution was to the following Effect: "That it appears to this Committee, that the Trial of *Elizabeth*, calling herself Dutchess Dowager of *Kingson*, ought to be had out of the Chamber of Parliament, as it is too small and inconvenient."

Lord

Lord *Mansfield*. I rise to give my Negative to this Resolution, first, because I think the Committee have exceeded the the Order of Reference, and decided upon a Matter not properly before them; and secondly, because I think there is not the least Occasion nor Necessity for trying the Lady out of this House. As to the Order of Reference, it imported nothing more than that the Committee should consider of several Circumstances, relative and preparatory to the Trial, which had not been before determined on by the House, and which at the Time I moved the several Resolutions, now on your Lordships Journals, I deferred for future Consideration, as not then having formed any Opinion on them. The first of those Resolutions ordained, that the Trial should be *within* the Chamber of Parliament. The first Resolution of your Committee now reported, contradicts
that

that directly ; for it says the Trial shall be had *out* of the Chamber of Parliament.

This it does, to be sure, in an indefinite Manner, without ascertaining the Place where the Trial ought to be had ; but it, nevertheless, contradicts a Resolution taken in a very full House, against which, as well as my Recollection serves me, not one dissenting Voice was heard ; but even if there had, or that the House had not been so well attended, the Effect would have been the same ; for until the Resolution had been rescinded, it can require little Argument to prove, that it was totally Incompetent for your Committee to enter into any Consideration relative to the proper Place of Trial. Your Committee have therefore exceeded the Powers under which they were to act. The Reference did not, nor could not mean, that they were to consider of the
pro-

properest or most convenient Place of Trial. That proper Place had been already fixed by the House; therefore, as long as the Resolution remains on your Lordships Journals, no Proceedings could be had thereon. The Committee have exceeded their Instructions, and of Course have acted irregularly. As to the Matter contained in said Resolution, besides the Irregularity, I cannot think it at all necessary, that the Trial should be had out of this House. I do not conceive that the Charge against the Lady has any Thing sufficient to distinguish it from many others tried at your Lordship's Bar. In the Year 1725, I was present myself, when Lord *Macclesfield* was tried for a grievous Offence at this Bar; an Offence, considering the Office he then held, that of Chancellor of *Great Britain*, accompanied by several very aggravating Circumstances, for which he might have incurred a Fine that would have affected perhaps the Whole of his Fortune,

E

and

and consequently have ruined and impoverished his Family. The Proceedings were by Impeachment, the most solemn Mode of Trial known under our Laws. The Prosecution was not carried on by Counsel, as it will be on the present Occasion, but by Managers from the other House, greater infinitely in Number, and requiring more Room. All Accusations carried on by Bill of Attainder, are tried at this Bar. Lord *Strafford* lost his Head on the Event of such a Mode of Trial; and several others I could mention, were it necessary, were tried in the same Manner. If then Trials affecting the Fortune and Honours of a Peer of the Realm, working a Corruption of Blood, and a Forfeiture of Lands, have been tried in the Chamber of Parliament, will your Lordships think that a Trial, which on Conviction cannot be productive of any of those terrible and important Consequences, requires a greater Solemnity.

For

For my Part, I am of Opinion it cannot ; for I remain still convinced, that although the Lady should be convicted of the Charge, the Event will Answer very few good Purposes by the Way of Example. Such a Consequence is, I believe, hardly expected. There never has such a Thing before happened, nor perhaps never will again. If it be meant as a Rule, it is, to my apprehension, very improperly applied ; for it can never work Reformation or Amendment among Persons of a different or inferior Rank. They know the Mode of Proceeding, already determined on in respect of themselves, should they be called to Answer a Charge of a similar Nature ; and the Solemnities which may be adopted on this Trial can never possibly come home to them. The Inconvenience for Want of Room seems to be the chief Ground of this Resolution ; but that could be easily remedied.

I remember to have seen Galleries erected below the Bar for the Purpose of admitting Auditors ; and I have frequently pleaded under them myself, when I have attended as Counsel. Besides these general Reasons, a solemn Trial in *Westminster-hall* will be attended with a very heavy Expence ; and I doubt much, if the Place of Trial should be changed, and that the Expence attending it had been foreseen, whether the Lady would have ever been tried. Another Point that might have weighed with the Committee, was, perhaps, that Persons charged with such Offences should be made as public as possible. For my Part I think otherwise. If the Prisoner should be innocent, and one Innocent must suffer more on such an Occasion than any other, her Misfortune must be aggravated ; if she should be found guilty of the Charge, or if she is conscious it will be made good, it is more than probable she will sink under it ;
then

then there will be no Trial at all, and every Argument of Solemnity and Example will be at an End. I must again remind your Lordships, that should the Lady be convicted, she will suffer no Punishment whatever. The Offence is a Clergyable Offence ; the corporal Punishment is remitted by Statute ; it will work no Corruption of Blood, loss of Dower, or Lands. If her Marriage with Lord *Bristol* shall be proved, her Goods and Chattels will become his Property, consequently the Whole will have the strangest Appearance imaginable. She will be brought to her Trial in *Westminster-hall*, with all the Solemnities that can be conceived. The Eyes of *Great Britain*, and all *Europe*, will impatiently wait for the Issue ; and, supposing the Charge attended with every possible Circumstance of Aggravation should be made good, what will be the Consequence ?—she will go off without any Degree of Punishment whatever. I have
heard

heard within these few Days, that a Bill is instituted in Chancery, to prove that the Sentence of the Ecclesiastical Court was obtained by Collusion between the Parties, in order to set that Sentence aside; but, supposing it should be proved that the Sentence was obtained collusively, I cannot see what Benefit the Promoters of this Prosecution will derive from it. The Prosecution is a private one, yet those who have set it on foot can reap no Advantage from any such Proof. I remember a Case, where a Person indicted for forging a Will, produced the Probate of in Court, in bar of the Indictment, and it was received as a good Plea, though it was believed he was guilty of this Charge; so in the present Case, though the Collusion should be made manifest, the Marriage will remain confirmed under the Sentence. On the Whole, I cannot perceive that any one good Consequence can possibly result from this Trial, either in a private or public

public Light; much less the Necessity of having the Lady tried in *Westminster-hall*, in Preference to the Parliament Chamber. For the Reasons above assigned, I am for disagreeing with your Committee, in this Resolution.

Lord *Lyttleton*.——I will not pretend to say, whether the Committee have exceeded their Power, or have gone out of the Order of Reference. If they have, it can make very little material Difference: The Defect can be readily remedied by Motion. I am always sorry when I have the Misfortune to differ from the noble and learned Lord who spoke last, particularly on a Subject of this Nature. I am far from thinking the Offence so trivial, or the Consequences so uninteresting, as his Lordship has been pleased to represent them. I think the Offence an Offence of the most atrocious Nature, and immediately destructive of the great Bonds of civil Society; and, in my Opinion, a Crime of the blackest
Dye

Dye ; for I know of none that exceeds it in Guilt. It is on this Account that I am for having the Trial carried on in the most public Manner, and with every possible Solemnity that this House is able to give. The noble and learned Lord says, that supposing the Lady, calling herself Dutchess Dowager of *Kingston*, should be convicted of the Charge made in the Indictment, yet she will escape unpunished. I think very differently, on the Effect of such a Conviction, from his Lordship. I think it will be no small Degree of Punishment, should the Event of the Trial go against her, that the noble and learned Lord on the Woolfack will, after informing her of the Judgment of her Peers, ask her whether she has been ever before admitted to her Clergy ; and, being answered in the negative, shall tell her, that her Punishment, that of burning in the Hand, is remitted, on Account of her Rank ; but that if ever she should *offend again*, on a Clergyable Offence, that she

she will be liable to suffer the Pains and Penalties of Death ; of suffering as a common Felon. I do not say it is probable that the Lady will offend again in this or any other Manner ; but I contend it is *possible* she may ; and under that possibility, whatever the learned and noble Lord may conceive, I insist that such a Warning, delivered in the Manner I have represented, will be no *slight*, but a very *heavy* and *exemplary* Punishment, to a Person of her Rank. His Lordship seems to be of Opinion, that the proposed Solemnities of this Trial, will not, nor cannot, operate by Way of Example, on Persons of inferior Rank. I beg leave to think it will. I think it will teach the Public at large, that the *highest* are not exempt from Punishment, if they should transgress the Laws ; and it will likewise convince them, that as the Laws of their Country are their common Security, so they are the common Avenger of every Species of Guilt

and Injustice, be the Rank or Fortune of the Offenders what it may. The noble and learned Lord, speaking of the Suit instituted in the Court of Chancery, says, that that Court is restricted in its juridical Proceedings, by the Sentence of the Ecclesiastical Court, which has declared the Marriage void. Now, my Lords, if that Sentence should come out to have been procured by Collusion and Imposition, that is another sound Reason for sifting this Matter to the Bottom; for what would be the Consequence of leaving it in the Power of Parties to dissolve Marriages by such collusive Management as this? But that by previous Agreement, instituting a Cause of Jactitation, where no Evidence appearing, only such as the Parties think proper to produce, the Ecclesiastical Court, of Course, give a Sentence, and they are left at Liberty to marry again. If the Lady, in such a Case, should

should happen to have Children, the Law is defeated, the true Line of legal Descent broken, and the next Heir at once robbed of his Honours and Estate, by thus introducing a spurious Issue. This, I say, my Lords, is a Matter that deserves your Lordship's most serious Consideration ; and is by no Means of that unimportant, trifling Nature, that it is to be attempted to be represented. This Lady, or any other Lady, by such Means as these, may have it her Power to render illegitimate those that are truly legitimate ; and to render spurious those who have the most clear and legal Rights. For aught any thing your Lordships know, or can venture to foretel, if this Matter be not now properly scrutinized, and enquired into, in twenty Years hence it may again present itself in a different Form. We may be called upon to decide on the Claims of dif-

ferent Claiments, for those Honours ; or for any other in which similar Arts may be employed to defeat the Descent. This Reason, united with several others, is one that has determined my Opinion on the Propriety of entering fully into the Merits of the Affair. If, upon Conviction, the Property of the Personal Estate should appear to be vested in the Lady, by any particular Agreement, that is another Object worthy of Notice ; and what I think, were there no other, should urge us to see that the Claim which the Crown is entitled to make by the Attorney General, should be fairly and fully maintained. The great Expence of a Trial in *Westminster-Hall* is another of the noble Lord's Objections ; but I am Confident such a Consideration will never weigh with his Majesty, when Justice is the Object to be obtained ; and that Species of Justice too, which in its Consequences may be of such singular Importance to the Nation at large.

There

There are other Matters of a private Nature, which are not totally unworthy of your Lordships Notice. The Suit the noble Lord speaks of can never come to a Hearing, till your Lordships decide on this Matter; for as the Lady is not obliged to answer upon Oath, she will of Course answer to the Bill filed against her in the Court of Chancery, that she cannot give in a full Answer till this House shall determine. In this View again, the public Administration of Justice will be retarded. In one Event, if she should be acquitted, there is at once an End of the Matter; in the other, if she should be convicted, that Conviction will be Ground for a Civil Prosecution for the Recovery of the real Estates. On the whole, my Lords, I most sincerely wish that the Affair may be fully and fairly investigated; that the Trial may be, in the most public Manner, accompanied with every possible Solemnity; that it may not prevail

prevail in general, that this House, departing from its Duty and known Love of Justice, should chuse to huddle the Affair up, by having none, or at least very few Witnesses, to their Proceedings and the Ground of their Determination.

Lord Mansfield.—I am sorry I have had the Misfortune to be so much misunderstood by the noble Lord, or that it should go out of this House, that I had offered a Syllable in Extenuation of the Crime; on the Contrary, if any Act of Collusion should come out, and it should be made appear that the Ecclesiastical Court was imposed on by the Parties, and made to pronounce Sentence upon false Information, it would be a very great Aggravation of the Offence, nay, of a much blacker Dye than some Offences the Law defines and pronounces Murder. His Lordship states another Argument, in which he is, I think, equally

equally mistaken, and would with me operate in a direct contrary Manner from what he seems to wish. He says, the Cause instituted in the Court of Chancery cannot proceed, and that the Lady's Conviction will be a Ground for civil Prosecution. That is one, and indeed the chief Exception I have to the Trial, for I shall always be against criminal Prosecutions, as laying a Ground for pursuing and maintaining civil Claims. The noble Lord says, that it is in the Power of this House to add to the Punishment, should the Lady be convicted. I doubt that this Assertion can be justified in Law. I know of but one (for there is no Precedent throughout the whole Business to direct us) and that is the Statute of *Elizabeth*, which empowers Justices of the Peace to commit Persons convicted of Clergyable Offences to Prison, for a Time not exceeding twelve Months. The Words of the
Act

Act are, all Rogues, Vagabonds, &c. I believe it would be difficult, by any analagous Reasoning, to prove, that the Act alluded to vests such a Power in this House, *over its own Members*. As to the general Motives for making the Trial as public and solemn as possible, I see very little Weight in them. Great Numbers of People may be accommodated in the Galleries; and as to the Preservation of Descents, that Part of the noble Lord's Argument comes to Nothing; for the Marriage Act has obviated every Inconvenience, were any such to be dreaded. It provides, that all Marriages shall be publicly solemnized; that there must be a Licence granted; that the Parties must be known to the Clergyman, or Resident in this Parish; that there must be a Publication of Banns; and that the Whole must be authenticated by a Register.

Lord *Sandwich*.—I happened to come down to the House the Day the Committee

was

was to sit, and, going up Stairs before they proceeded to Business, they did me the Honour to vote me into the Chair. We were fully aware that the House had ordered the Trial to be had in the Chamber of Parliament ; but when the Plans were submitted to our Consideration, we perceived, that there would not be sufficient Room for the Counsel and the Parties ; the Space at each Side, according to the Plan delivered to us, not having Room for above twenty Persons at each Side. Whatever we did, therefore, was merely to express our Sentiments as a Ground for future Consideration. I do assure your Lordships, that it was a respectable Committee ; and that there was not one noble Lord present, who did not unite in Opinion, that the Parliament Chamber was too small, and in every Respect inconvenient. As to the Resolutions, all I have to say concerning them is, that I was the Instrument employed to lay the Sense of the

Committee before the House ; and I cannot help declaring, that both now and then, in my Opinion, *Westminster-hall* is a much more proper Place for the Trial than the Parliament Chamber ; for undoubtedly, the Nature of the Charge and the Rank of the Person, require and call for the most public and solemn Trial.—It is always with the greatest Diffidence I ever differ from the noble and learned Lord ; and now probably I am wrong. I hope therefore the noble Lord will believe, I suggest what I am going to offer, more in order to gain Information, than by Way of maintaining any settled Opinion of my own. The Matter I allude to is his Lordship's asserting, that the Marriage Act will prevent every possible Evil, that might otherwise arise by instituting Causes of Jactitation in the Ecclesiastical Court ; and obtaining Sentences there by Means of Collusion and Imposition. I dare say I am wrong ; but I have hitherto imagined

gined, that Marriages solemnized beyond Sea, or in *Scotland*, are valid and binding here, or within the Kingdom of *England*, notwithstanding the Provisions of the Marriage Act, so that they be legally solemnized according to the municipal Laws of the respective Countries where the Ceremony is performed.

Lord *Mansfield*.—The noble Lord is partly right; but he misunderstood me. I laid down the Rule as a general one, not as applying to every possible Exception that that might arise; and the Instances the noble Lord supposes, do not come within either the Rule or the Exception; for in the Case of the Lady, who is the Subject of the present Debate, her supposed Marriage with the present Lord *Bristol* was never publicly declared; she always continued to live as a single Woman till the Matter

came to be litigated, and was brought before the Ecclesiastical Court; whereas in Marriages solemnized beyond Sea, the Parties are supposed to live in a public State of Matrimony.

The Lord Chancellor.—After what has been urged this Day, there can be no Doubt that the Charge stated in the Indictment is of such a Nature, though it stood alone, as to demand your utmost Attention; but, when coupled with the Circumstances of Collusion and Deceit, which is the true Ground of this Prosecution, I am satisfied there is not a noble Lord in this House who can think of it without Horror. The Crime itself, however odious soever it may appear, seems nothing when compared with the aggravated Means, employed to ensure it Success, and put it beyond the Power of Discovery or Detection. I am clearly of Opinion that this Trial should be accompanied

panied with every possible Solemnity; and that Nothing should be omitted to convince the Public that Justice only was wished or intended on either Side, or that any Thing was meant to be suppressed. I cannot but think the Punishment, though it should be productive of no further Consequences but bare Conviction, will be very heavy. The Infamy attending it surely is something, were it to rest there; and if it should reach all or any Part of the Lady's Fortune, it must be very severely felt. On the Whole, I do not think the Parliament Chamber at all calculated for this Business; and should the aggravating Circumstances, that the Sentence was obtained collusively, turn out to be true, I confess the Words of a great Lawyer, respecting a Person who married (or debauched) his Sister-in-law during the Life-time of his Wife, seem extremely applicable, that the Crime was in itself of the worst Complexion, but attended by this Circum-

Circumstance, it became still, if possible, a thousand Times more odious and criminal.

Lord *Suffolk*.—I shall not enter into any Discussion of the Subject, respecting Crime with which the Lady is charged; neither shall I now give my Opinion, whether *Westminster-hall* or the Parliament Chamber is the most proper Place for the Trial. I shall reserve myself to speak to that Question, when it comes properly and regularly before the House. The Question now immediately under Consideration, is solely confined to the Conduct of the Committee, to determine whether they have not exceeded their Powers; and instead of adhering to the Order of Reference made by the House, have obeyed that Order, or have not rather controuled our Proceedings. In my Opinion they have; and, by so doing, have acted irregularly; for which Reason, when
the

the Question comes to be put, I shall vote for disagreeing with the Resolution now before you. I look upon myself by no Means precluded by that Vote for giving my Opinion for preferring *Westminster-hall* to the Parliament Chamber, nor for the latter in Preference to the former, when that Point shall come to be discussed. If, however, I imagined that the Punishment of the Offence immediately depended on the Mode of Solemnity of the Trial, I own, very fairly, the Nature of the Charge, and the Circumstances of Aggravation supposed to be combined with it, seem to me to call for the utmost Severity it is in the Power of this House to inflict. But reserving my decided Opinion on those Points for its proper Place, I again repeat, that the Proceedings of the Committee seem totally irregular, and as such I shall give my Vote for disagreeing with the Resolution now reported.

Lord

Lord *Gower*.—I came into the Committee Room before it rose, and, as one who attended, am answerable in Part for the present Resolution, though I had no direct Hand in framing it. On Reconsideration, I think the Committee exceeded their Powers, and am therefore very ready to acquiesce in the Sentiments of the noble and learned Lord who first spoke in this Debate. As to the Place where the Trial ought to be had, I must confess, I am for every possible Solemnity imaginable, and am for having it attended by every Act of Notoriety the Enquiry into a Charge of so atrocious a Nature most loudly calls for.

Lord *Weymouth*.—I do not rise to pay any Censure on the Conduct of the noble Lords who composed the Committee. I am convinced that they acted by Mistake, and offended against the Order of the House, on an Idea that the Place proper for the
Trial

Trial, not the Accommodation of the Counsel, Witnesses, Agents, &c. was what was properly referred to them. This last was clearly the Object which the Committee was confined to. They went beyond their Instructions, and of Course have acted irregularly. On this Ground alone, I shall vote against the Resolution, reserving my definitive Opinion till the Matter shall come before the House in another Form. If any noble Lord on that Committee had wished to bring the Point fairly into Discussion, the regular Way would have been to move to have the former Order discharged, which appointed the Trial to be had in the Parliament Chamber. Much Stress has been laid on the Heinousness of the Crime, and I think with very great Justice; but this has been made Use of as an Argument to prove what?—that the Lady ought to be tried in *Westminster-hall*. A very strange Conclusion indeed, as if there were any Thing miraculous or

H

talismanic

talismanic in the Air of *Westminster-hall* more than in that of this House. In my Apprehension, the Crime, the Proofs, the Means of discovering the Truth, will be the same in one Place as the other. However, that Matter being no Part of the present Consideration, I do not mean to give any Opinion on it till it comes properly before me.

Lord *Cathcart*.—There was not the least Intention in the Committee to pass any Censure on the Order moved for by the noble and learned Lord the first Day this Business came before the House. The Resolution now so much censured, makes its present Appearance by Mistake; and it has happened in this Manner:—When the Resolutions were drawn up, the Clerk was ordered to transcribe them; but as it is our Misfortune at present to have but one Clerk, he was obliged to come here to attend his Duty,
by

by which Means he was under the Necessity of giving the Resolutions to some other Person to copy. This Person misplaced the present Resolution, and put it first, instead of giving it the last Place, as you will see by perusing the Resolutions ; for all those that follow, suppose that the Trial is to be held in the Parliament Chamber, while the first declares the very Contrary. I beg leave to assure the noble and learned Lord, that the Committee endeavoured to Act in the best Manner ; and the Ground of this Resolution was, that *no* Precedent could be found, where any Peer or Peerefs had been tried for a *criminal* Offence, but in *Westminster-hall* : And in their Researches, they perceived, that the Committee appointed to draw up Resolutions for ordering and directing Lord *Macclesfield's* Trial, have stated the same in their Report. This, united with the Want of Room below the Bar, was, I assure your Lordships, what determined

your Committee to come to the present Resolution.

Lord *Dudley*.—For my Part, I do not think that the Committee by any Means exceeded or went out of the Order of Reference. Persons from the Board of Works attended for the Purpose of shewing the Space allotted for Counsel, Witnesses, &c. and it appearing so very small and inconvenient, as well as for the weighty Reasons urged in the Course of the Debate, we thought proper to come to this Resolution. I dare say there is not a noble Lord who was present at that Committee, has heard any Thing this Day to induce him to alter his Sentiments. In that Persuasion, when the Resolutions now before the House are disposed off, I mean to give Notice, and fix a Day, for taking the Sense of the House, which is the proper Place for the Trial of *Elizabeth*, calling herself Dutcheſs Dowager

ger

ger of *Kingston*. He made the Motion afterwards, and the same was ordered to be taken into Consideration on *Thursday*.

Lord *Mansfield*.—The noble Lord (Lord *Catbcart*) need not have given any Assurance that there was no Intention of passing a Censure on the Motion made by me, and carried in a full House, for trying the Lady in the Parliament Chamber. I never supposed any such Thing. It was not my Act, but that of the House: I was only the Mover. I do not mean to trouble myself any further about it, nor should I now, were it not that the Order of the House is concerned. All I have to add, is, that if Expedition is looked for, the Preparations necessary to be made for a Trial in *Westminster-hall* will rather retard than accelerate the Business.

The Question was then put on the first Resolution, and unanimously disagreed to.

The

The second Resolution of the Committee was, "that *Elizabeth*, calling herself Dutcheſs Dowager of *Kingſton*, ſhould, on her Appearance at the Bar, on the Day of her Trial, be taken into the Cuſtody of the Gentleman Uſher of the Black Rod; and in Caſe the Trial ſhould continue more than one Day, that ſhe ſhould be committed to the *Tower*."

Lord *Mansfield* objected to this Reſolution, and moved, that the Houſe do diſagree to that Part of it relative to committing the Lady to the *Tower*. He oppoſed it on the Grounds of the Fatigue it might Occaſion to the Priſoner; and the Difficulty of rendering her up to the Lieutenant of the *Tower* by any Order made now, as ſhe was out upon Bail.

The Lord Chancellor ſaid, he ſaw no Difficulty at all ariſing from the Mode propoſed

posed; that he had attended the Circuits sixteen Years, and he always saw, that on the first Day the Bail came into Court and discharged themselves, by surrendering or delivering the Prisoner into the Hands of the proper Officer, who, if the Trial did not come on that Day, took the Prisoner into Custody, and held them in Confinement till they were tried.

Lord *Mansfield* again observed, that what the noble and learned Lord stated was perfectly right; but his Argument went to prove, that no Order for the future Confinement of the Prisoner was ever made, till the Prisoner was first surrendered and brought into Court, in Discharge of the Bail; therefore the proper Mode of Proceeding would be to wait for that Event, and, when it arrived, either to take fresh Bail, or commit the Lady to the *Tower*.—

The

The latter Part of this Resolution was disagreed to ; and it only orders, that the Lady shall, on her Appearance at the Bar, be taken into the Custody of the Black Rod.

The other Resolutions of the Committee which followed, were severally reported, and agreed to.—These were in Substance, that no Person whatever be admitted above the Bar but a Peer of Parliament ; that no Person be admitted about the Throne but Peers of *Great Britain*, not sitting in that House, and Peers eldest Sons, or their Heirs apparent ; that a Rail be erected from the End of the Archbishops Bench to the Woofsack, (to prevent their Lordships from crouding about the Fire ;) that the Side-Door next the Black Rod's Seat be kept open ; that his Majesty be addressed to give Orders for a Party of the Guards to attend ; and that all the Avenues leading to House be kept open.

On the 14th of *December*, The order of the Day being read, Lord *Dudley*, pursuant to the Notice he had given on Tuesday *December* 12, moved, " That the Parliament Chamber being too small and inconvenient, " for the Trial of *Elizabeth*, calling herself Dutchess of *Kingston*, and indicted " by the Name of *Elizabeth Hervey*, Wife " of the Honourable *Augustus John Hervey*, " now Earl of *Bristol*, and it being unprecedented, that, any Peer or Peerefs of " this Realm, indicted for Felony, has been " tried in the Parliament Chamber. Ordered, That the said Trial be in *Westminster-hall*, on the 24th of *January* next." His Lordship supported his Motion in the following Speech.

L O R D D U D L E Y.

" THE Resolution of your Committee reported on the last Day we sat on this Business, being pronounced irregular, previous to stating the Grounds of the Motion,

I which

which I shall submit to your Lordships, before I sit down, I think it incumbent on me, as serving on that Committee, to point out the Cause of that seeming Irregularity, and the apparent Contradiction there was between the first Resolution of the Committee and the Order under which they acted. In the First instance, they proceeded to call the Officers of the Board of Works before them, and to examine the Plan and Accommodations of a Trial had in the Parliament Chamber. After such a Space had been allotted for the Prisoner and her Attendants, for the Counsel, Witnesses and Agents, such a Space for the Persons attending the Trial to pass and repass, it was found, that there would be no Room for the Admission of Auditors of any Rank or Condition whatever; or that if there might for a few, it would be impossible to draw any Line to ascertain who they should be. Besides, it was considered, that on Account of the Sex of the Prisoner, it would be proper

per to have a Room apart, where, on some Occasions, it might be improper to admit any but her Female Attendants. She might be taken ill or indisposed in the Course of her Trial; she might want—to withdraw for other Purposes, in which Case it would be proper for her, to have a Room secluded from the Intercourse of even her own Counsel or Agents, which, if she should be tried in the Parliament Chamber, could not be the Case, no such Room being to be had. Those Reasons united to induce the Committee, after strictly complying with the Order of Reference, (for all the following Resolutions were framed on the Ground, that the Trial was to be had in the Parliament Chamber) to submit to the House the Inconvenience of holding the Trial in the Place appointed, not with an Intention of exceeding their Instructions or controuling the Order of the House, but barely to state an Opinion relative to what was the Result of their Enquiries. The Effect of all this

was, however, destroyed by a Mistake of the Clerk who transcribed the Resolutions; for instead of placing the Resolutions stating the Inconvenience last, he placed it the first, and by that Means the whole together carried an Appearance of Absurdity and Contradiction, only to be reconciled and explained in the Manner I have now related. We had another Point in View, though as we looked upon ourselves in some Measure restricted by the Order, we made it no Part of our Report, that was after the most minute Researches, we could not find a single Precedent of a Peer or Peerefs being tried for Felony in the Parliament Chamber. I am therefore of Opinion, that I am well justified in stating in the Proposition I am about to submit to your Lordships, that the Place of Trial is unprecedented. There were besides some Matters mentioned by a noble and learned Lord, whom I do not now see in his Place, (Lord Mansfield) that were far from striking me

in

in the same Manner they did that noble Lord, It was said that the Trial would not probably last Half an Hour. Now I understand that it will be of much longer Duration, and may be protracted to the Length of two or three Days, if not more, should the Proofs come out that are expected to be aduced. The Trial was, I remember, likewise treated as a slight and trivial Matter, as drawing after it no serious Consequences, and of Course requiring none of those Solemnities usual on similar Occasions; but in this again I differ very widely from the noble and learned Lord, for I think a Conviction for Felony, pronounced by your Lordships, as the first Court of Criminal Judicature a very heavy Punishment, a Punishment that the most obdurate must very sensibly feel. I shall not speak of any of the other Consequences such a Conviction would be productive of, as that is no Part of our present Consideration. It is sufficient to observe, that the Offence with which the Lady is charged,

charged, is of the blackest Dye, and said to be attended with the most aggravating Circumstances of Criminality, that the Trial should be had with all possible Solemnity such a Charge demands. If your Lordships should determine that the Place of Trial still remains at your own Option, I have one of the greatest Authorities to shew that you cannot dispense with the usual Form of appointing a Lord High Steward. Lord Coke says, " Though the House of Peers have a Right to try one of their own Body at the Bar of their own House, yet there must be a Lord High Steward appointed to preside at such Trial." On the whole, my Lords, taking the Inconvenience, the Point of Precedent, and the Solemnities required on such Occasions. Time immemorial, I shall move you, " As the Chamber of Parliament has been found an inconvenient Place, and as it is unprecedented to try a Peer or Peerefs, indicted for Felony, at the Bar of this House, that *Elizabeth*, calling herself Duchess Dow-
ager

ager of *Kingston* (indicted by the Name of *Elizabeth Hervey*, Wife of *Augustus John Hervey*, Esq; now Earl of *Bristol*, and one of the Peers of this Realm) be on Wednesday the 24th of *January* next, in *Westminster Hall*."

LORD MARCHMONT.

"I do not rise to oppose the whole of the noble Viscount's Motion, though I think it is expressed in harsher Terms than I would wish to see adopted by this House on the present Occasion. What I rise chiefly for is, one of the Grounds on which it is maintained, that of its being *unprecedented* to try a Peer charged with Felony at the Bar of this House; because I believe I shall be able to satisfy your Lordships, that the Precedents all tend the other Way. From the earliest and most authentic Records, so early as the Reign of *Richard* the Second, we find that no one Place or Chamber had a Preference of another, for that the Choice entirely

entirely rested in the House. This is plain, from their Lordships appointing the *Chambre Blanche* for the Trial of the Earl of *Arundel*, which could never have been the Case, if the constant Usage had been to try Peers in *Westminster-hall*. On the Point of Inconvenience, I shall say nothing. The Parliament Chamber may be inconvenient; the Solemnities of the Trial may require more Room and Accommodations than this House will permit; but what I contend is, that the Position stated in the Motion, "that it is unprecedented, &c." is false in Fact, and that it is competent to this House, and not contradicted by Precedent; that it may, by Right and ancient Usage, appoint the Trial to be held in any Chamber your Lordships shall judge fit. But let us, my Lords, come nearer to our own Times; let us refer to the well known Case of the Earl of *Strafford*, who being ordered to be tried at the Bar of this House, the Commons objected to it; and after several Resolutions
taken

taken by both Houses on the Subject, a Conference was appointed, at which the Proof was put on the Commons to establish the Precedent. And when the Earl of Bath reported the Proceedings, it appeared the Commons were obliged to rest their Arguments *solely* on the Ground of Convenience. Such was the Temper of the Times, joined perhaps to the prevailing Disposition of the House at that Time, that their Lordships conceded, and the Trial was held in *Westminster-hall*. The Reasons assigned by the Commons, besides the Argument of Inconvenience, were similar to some of those now urged. The necessary Solemnity was much insisted on, so was the Popularity. What was the Consequence of this first Concession, which was followed by several others, is totally needless to repeat. A Case of a similar Nature happened the very next Year, more immediately applicable to one Part of the present Motion; that was the Case of Lord *Mordaunt* for Felony. Here the same Controversy was renewed, and

continued from the Beginning of 1641, to June 1642, when the legal Government being overthrown, the Matter never came to be finally settled. On both those Occasions the great *Selden*, to whom your Lordships are so much indebted for the very valuable Manuscripts now in your Possession; and who had twenty Years before received the Thanks of both Houses, for his useful and learned Researches into the ancient Records of the Kingdom, particularly into those respecting the Origin of Parliaments; was an active Member of the other House; and would, it may be well presumed, have maintained the Assertions at the Conference, if in his Power. That not being the Case, I am, I think, warranted, as well on that Account as that the Commons themselves gave up the Point in Controversy, and rested all upon the Argument of Inconvenience and Popularity, in affirming that it is *not* unprecedented to try a Peer or Peerefs indicted for Felony at the Bar of
 this

this House. The Precedents now alluded to prove this, though neither of the noble Lords were tried here, for the Reason before assigned, their Lordships having relinquished in one Instance on the Ground of Convenience, and in the other the Matter having dropped, and in both, the House having manifested a Spirit of improper Concession, which, in the End, terminated in their own Ruin and Dissolution; not, however, objecting to the Ground of Inconvenience, if the noble Viscount consents to withdraw that Part of his Motion respecting the Precedent, though I think it will still have the Appearance of Harshness, I shall not be for disagreeing to the Motion thus amended."

L O R D G O W E R.

"I still remain of my former Opinion, that *Westminster-hall*, on the Ground of Solemnity and Convenience, is much a fitter Place for the intended Trial than the Bar of thi

House, The noble Earl who spoke last, has, indeed, confessed this in Part. I shall not enter into a View of the noble Earl's Sentiments. It is enough to say, that the Committee have declared their Opinion, that the Chamber of Parliament is inconvenient; and that no sufficient Reason has been yet assigned to shew that the Trial ought not to be held in *Westminster-hall*: I must however observe, that the State of the Lady's Health is at present very precarious; and that her Mind is so far affected, as to render her very unfit for making her Defence against a charge of so heavy and consequential a Nature. It is my Opinion, therefore, before we take any other Steps, except appointing the place of Trial, that we should call upon her Physicians, some Day between this and the Recess, to know what Condition she is in, and whether she will be able to undergo the Fatigue of a Trial, so early as the Day appointed in the Motion. If she should, then it will be Time enough to enter upon the

Con-

Consideration, and decide upon the Mode, and all the other Circumstances consequent upon a Trial in *Westminster-hall*. Should the noble Viscount approve of this Proposition, and consent to rest satisfied with this first Motion, respecting the Place of Trial, till we have an Opportunity of learning from the Lady's Physicians her then State of Health, I shall very readily give it my assent."

LORD DUDLEY.

"The noble Earl who objects to the Word *unprecedented* in my Motion, has taken great Pains to shew, that this House have claimed a Right of trying their Members where they pleased. If his Arguments went only to that, I should very readily acquiesce. The Position contained in my Motion, does not contradict that: it only states a Fact, and I defy his Lordship to quote a single Instance in which any Peer has been tried for Felony at the Bar of this House, or in any
other

other Place, but in *Westminster-hall*. That is, what is stated in the Motion, not that the House may, nor cannot try a Peer of this Realm for Felony at your Lordship's Bar. The Precedents besides, urged by his Lordship, are in the Reign of Charles the First. I wish for Precedents of a later Date. I should have been better satisfied, if his Lordship had referred to some since the Revolution; for long before that Period, the Trials in this House were utterly disgraceful. It was in the Power of the Prince, by selecting a certain Number of his Creatures, under the Denomination of a Committee, to sacrifice any Man, who by his Integrity, or independent Spirit, had rendered himself obnoxious to him or his Ministers. If, however, the noble Earl produces one Precedent, which contradicts the Terms in which my Motion is conceived, I am very willing to relinquish the objectional Part of it; till then I shall remain of the same Opinion."

LORD

LORD MARCHMONT.

“I think the Case alluded to, fairly prove what the noble Viscount seems to doubt. They at least prove, that the Choice remains with your Lordships; and it seems to me, to be very hazardous to establish a Precedent which might, on some future Occasion, though not now foreseen, establish a Doctrine of a very dangerous Nature. It is a great Mistake, which prevails with many, that a Fact establishes a Precedent; whereas nothing can be more different. There may have happened many Facts, without laying a Foundation for establishing one Precedent. Those Facts may have been attended with a Variety of Circumstances now impossible to be ascertained or decided on. That no direct Proof can be produced of any Peer being tried for Felony at the Bar of this House, may be very true, but that, in my Opinion, comes very short of a Precedent. The present Motion, if carried, would at least imply, if not establish such a
Pre-

Precedent, which cannot be supported by any Rule of former Proceeding. I shall, on that Account, as well as, that I take the Assertion to be totally unnecessary, be for having that Part of the Motion withdrawn."

LORD LYTTLETON.

"We are convened here this Day, my Lords, merely to decide on the Time and Place for the Trial of the Person, assuming the Name and Title of the Duchess of *Kingston*. The Committee appointed by your Lordships have reported that the Parliament Chamber, is an inconvenient Place for that Purpose; the natural Conclusion from which is, that the Trial ought to be held in the usual Place of Trial, which is *Westminster-hall*. I have not heard a single Consideration of the least Weight urged against it. If indeed it had appeared, that by any Accident or uncommon Circumstance, the Lady had been brought into a Situation which would render a Trial necessary, and in which

which the Charge was of such a Nature as to bespeak the Innocence of the Culprit, no one would be readier to give every possible Indulgence the Nature and Circumstances such a Case would necessarily be entitled to. Is that the Case here? No; should the Lady be convicted of the Charge made against her, she will be convicted of a Crime deeply affecting the Peace and Happiness of civil Society; and should the Conviction be attended with Proofs of Fraud and Collusion, it will appear with every possible Aggravation of the most unexampled Iniquity. If the Lady be Innocent, she will surely be happy in having her Innocence made manifest: If the Charge brought against her should turn out to be true, none of your Lordships would, I dare say, wish to have any of the Mortifications resulting from a public Trial mitigated or softened. For my Part, I think it is incumbent on your Lordships to make the Trial as public as possible. It is a Duty you owe to yourselves and to the People at large,

L

that

that it be attended with every Circumstance of public Notoriety and Solemnity, to convince them of the Justice and Rectitude of your Proceedings. Places where Justice is administered should be open to the Eye and Observation of the Public. What will be the Case here? that there will be Room for twenty or thirty Persons. This, in my Opinion, would be establishing a very dangerous Precedent. It might very materially affect this House, it might affect your Lordships Posterity. A Time might come, when a Peer might be brought to his Trial at this Bar, when only the same Number would be admitted; and Care might be taken to occupy the Room with Persons admitted on Purpose to misrepresent what had happened, and might consequently deprive the Peerage of the Privilege of a fair, indifferent, and open Trial. The noble Earl, who has this Day endeavoured to produce so many Precedents, has, I think, drawn them from Times very unfavourable both to public Liberty and

and true constitutional Government. His Lordship has taken them from the Time of Charles the First. But I trust that the Principles of the Parliaments in those Times were as opposite to the present, as the Disposition of that mistaken Tyrant was to that of his present Most Gracious Majesty. As to the Precedent this Notion may tend to establish, I do not pretend to decide on it. However, as it has been so strongly objected to by the noble Earl, who spoke early in the Debate, I would recommend to the noble Lord who made the Motion, to substitute the Word *unusual* for *unprecedented*, though I cannot perceive, that there is any Occasion for such an Alteration. Much has been said as to the *trivial* Consequences which will follow the Conviction of this Lady; but, for my Part, I think the Solemnities attending it, the Sentence to be pronounced by the noble Lord on the Woolfack, before so great, respectable, and numerous an Auditory, as will be assembled on

the Occasion in *Westminster-hall*, will, to a feeling and ingenuous Mind, be a greater Punishment than barely suffering under any Sentence the Law, on the Conviction of any capital Punishment, can ordain and inflict."

A Conversation now ensued, in order to render the Motion palatable to all Parties. Lord *Dudley* gave up the Point of Precedent, and Lord *Abercorn* reconciled the Resolution of the 4th of *November* to that now before the House, by retaining the Words "this house." When this Matter was adjusted, the amended Motion was to the following Effect:

"That the Trial of *Elizabeth*, calling herself Duchess Dowager of *Kingston*, and indicted by the Name of *Elizabeth Hervey*, Wife of *Augustus John Hervey*, now Earl of *Bristol*, and one of the Peers of this Realm, be on *Wednesday* the 24th of *January* next, at the Bar of this House in *Westminster-hall*."

From

From the Nature of this Case, the sagacious Reader will observe, that whatever might be the *private* Views of the Prosecutors, there were not wanting those who from other Principles, were inclined to condemn the supposed Wife of the Earl of *Bristol*.—Marriage, whether considered as an ecclesiastical or merely as a civil Constitution, ought doubtless to be held sacred in every civilized Nation. Whatever be the Form or Ceremony of the Nuptial Rites, they ought ever to be kept inviolate; the Security of them, should be insured by every possible Exertion of Power, though the *Mode* may vary according to the Laws and Customs of various Countries. It has likewise been observed, with Justice, that notwithstanding the Propensity of the Eastern Nations to Polygamy, yet as, upon the best Calculation that can be made of the human Race, the Number of Males and

Females

Females appear to be nearly equal*, this is but an Abuse, and the Custom is therefore in Reality irrational, because it is unnatural. Polygamy for this Reason, is condemned by the wise Legislatures of Europe; and with us it is ranked among felonious Offences.—Thus Judge *Blackston* †, “ Another felonious Offence, (says he) with Regard to this holy Estate of Matrimony, is what our Law corruptly calls Bigamy, which properly signifies being twice married, but with us is used as synonymous to Polygamy, or having a Plurality of Wives at once: Such second Marriage, the former Husband and Wife living, is simply void, and a mere Nullity by the ecclesiastical Law of *England*: and yet the Legislature has thought it just to make

* It is generally reckoned, that there are rather more Males than Females born; which supplies the Deficiency that there would otherwise be in the former Sex, on account of Wars and other Accidents to which they are more particularly exposed:

† Book iv, Page 165.

make it Felony, by Reason of its being so great a Violation of the public Oeconomy and Decency of a well ordered State; for Polygamy can never be endured under any rational civil Establishment, whatever specious Reasons may be urged for it by the Eastern Nations, the Fallaciousness of which has been fully proved by many sensible Writers; but in Northern Countries, the very Nature of the Climate, seems to reclaim against it, it never having obtained in this Part of the World, even from the Time of our *German* Ancestors, who, as *Tacitus* informs us “prope soli Barbarorum singulis
“uxoribus contenti sunt,” it is therefore punished by the Laws both of ancient and modern *Sweden* with Death, and with us in *England* it is enacted, Statute the 1st, of Jac. the I. ch. 11, “that if any Person being married do afterwards marry again, the former Husband or Wife being alive, it is Felony, but within the Benefit of Clergy.”

In

In this general View of the Subject, Polygamy, or Bigamy, must appear to be a heinous Offence against civil Society; it followed therefore, that all such as credited the alledged prior Marriage of the Hon. *Elizabeth Chudleigh*, to the Hon. *Augustus John Hervey*, before her Union with the late Duke of *Kingston*, and did not deem the Sentence of the Commons on the Case definitive, must naturally be led to look upon the last Marriage in a criminal Light; he who was the first and legal Husband, according to their supposition, being actually now living. For this Circumstance must be deemed sufficient to produce a legal Disability in the Party to contract another Marriage, else would all the Laws relative to matrimonial Matters in this Country be void and of no Effect. The same great Lawyer, whom we quoted above, in treating of Disabilities to enter into the Marriage State, expresses himself in the following Manner *.

* Blackstone, Book i. P. 43.

The first of these legal Disabilities is a prior Marriage, or having a Husband or Wife living, in which Case, besides the Penalties consequent upon it as Felony, the second Marriage is, to all Intents and Purposes, void, Poligamy being condemned by the Law of the New Testament, and all prudent States; especially in these Northern Climates: And Justinian, even in the Climate of modern Turkey, is express that
 “Duas uxores eadem tempore habere non
 “licet *.”

And as it is not permitted to the Husband in these Countries to have more than one Wife; so likewise it is forbidden by the same Laws for a Woman to have more than one Husband; the latter, indeed, being a Circumstance still more unnatural, and consequently more improper than the former, as the Permission of it would confound all Order, and produce continual Disputes con-

* Blackstone, Book i. Page 431.

cerning Succession, and prove highly injurious to the Security of personal Property, as transmitted by regular Descent to the legal Inheritors; neither could it fail of producing perpetual domestic Broils, where two or more Persons were allowed to assume the Power only belonging to the Head of a Family.

It is urged by those who argue against the Dutchess Dowager of *Kingston*, "That she has committed an Action, which if countenanced, would open a Door to all these Disorders;—that she was really married to the present Earl of *Bristol*; that he was only enjoined perpetual Silence upon that Head in Consequence of a Sentence procured by Collusion of the Parties, and by the Absence of material Evidence purposely withheld upon that Trial, and therefore such Sentence ought not to be considered as conclusive:—In Effect, that this Cause, though already decided as a *civil* one, may, and ought

ought of Right; to be tried again as a *criminal* one; and that it would be both *improper* and *illegal* in the Attorney General to grant a *Noli Prosequi* upon this Occasion.

Such is the Substance of the Arguments which have been in general made use of against her Grace; but, as it is well known that these have not remained unanswered, we shall now proceed to lay before the Reader the principal Arguments on the other Side of the Question, from whence may be deduced certain Considerations concerning the real State of the Case, and the Propriety or Impropriety of a second Trial.

In the first Place, it is urged by her Grace's Advocates, that whatever may have been said of a *Collusion*, nothing of that Kind has really appeared; as also, that this was a Matter which ought to have been looked into before, and not made a Pretence now, to procure a *second* Trial for the same sup-

M 2

posed

posed Offence: at least a Petition ought to have been presented to the Commons (where alone Judgement could be given) for such second Trial, if Proof could be alledged of any Collusion or Suppression of Evidence; but that as no such Steps were taken, the Sentence therefore ought to be reckoned definitive, as was the Opinion of the noble Lord who spoke in her Defence.— That no Cause can, or ought to be tried in two different Courts, successively; but that where two Modes of Trial are open to the Choice of the Prosecutor, when he has made his Election, he cannot depart from it, nor ought a Matter once determined by civil or ecclesiastical Law to be tried again as a *criminal* Cause; that his Majesty's Attorney General in Case a *Noli Prosequi* be applied for, may, by Order, grant it *officially*, though he stands in the Place of Prosecutor for the Crown, and that the granting this *Noli Prosequi* would be an Act of Justice to an Individual, prevent an unnecessary Form
of

of Trial, and save a considerable Sum of Money to the Nation.

As there have been some who led by particular Prejudices of forming a rash and hasty Judgement, have arraigned the Lord Chief Justice, whose Speech we have recited above of Partiality, so there have not been wanting those, who have defended him against the Charge, and urged, that nothing was more strenuously asserted by his Lordship, than "That the Accuser as well as the Accused, ought to have every fair and legal Chance." It is allowed indeed by them, that Lord *Mansfield* mentioned her Grace's Privilege of being tried by her Peers, (which she Claims alike, whether as Duchess of *Kingston*, or as Countess of *Bristol*,) and this is a Privilege, which being Constitutional, they alledge, cannot be denied her; at the same Time that it follows, "That Peers or Peereffes, convicted of Clergyable Offences, shall not suffer corporal Punish-

Punishment *." With Regard to every other Circumstance, they add, that his Lordship spoke with Elegance and Precision, and justly pointed out to the House, the Nature and Consequence of such a Trial.—And as to the Argument of the Grand Jury's having found the Bill to be a true one, they refer this to a wrong State of the Case being laid before them, which was consequently productive of an Error in their Judgement.

Such is the State of the Arguments used on both sides the Question, in a Cause with the Nature of which, and the Facts that gave Rise to it, the Reader has been previously made acquainted. Now, when all Things are considered and duly weighed, if we look back to the Origin of these Proceedings, perhaps we shall see too much Occasion to conclude, that they were founded on private *Interests*; a Circumstance, which doubtless, the Noble Lord had in View,

* By a Statute of Edward VI.

View, when he declared, "That, he should
 "always be against *criminal* Prosecutions,
 "as laying a Ground, for pursuing and
 maintaining civil Claims,"—the Precedents
 for which, cannot be too rare in a free
 Nation.—We see the Person in Question,
 whether considered as the Wife of Lord
Bristol, or the Dowager of the late Duke of
Kingston, intitled to the Rank of a Peerefs,
 as well as to a considerable Fortune; we
 find, that when the Hon. *Augustus John*
Hervey, as he *then* was, declared, that he
 was married to her, she instituted a Suit of
 Jactitation, carried her Point, and obtained
 a Sentence against him: What more could
 she have done, if she *were not* married to
 him? Doubtless, it is a strange Method of
 Argument, to go about, to prove, that a
 Woman is a particular Person's Wife, mere-
 ly, because she has declared, that she *is not*,
 and has procured a solemn Decision in her Fa-
 vour; and especially, as whatever might be
 her Connexion or Friendship with Mr.
Hervey,

Hervey, it appeared, that she never had any Children by him, nor had any Sort of Settlement made upon her, in Consequence of such pretended Marriage.—There have indeed been various Conjectures, formed relative to the *Separation* of two Parties, who were never proved to be *united*; but, as none of these amount to more than mere *Conjectures*, they cannot be supposed to demand a Consideration.—But whatever may be the Appearance of Guilt, or of Innocence in the *Duchess*, yet the Manner of prosecuting her to Trial, should seem to be rather a Strain upon the Laws of this Country, which, notwithstanding all the Evasions that can be used, have absolutely ever established the Rule that no Person should be tried twice for one and the same Offence; and as one who has written on the Subject justly observes, “ even if there
 “ have been sometimes Instances of Collusion,
 “ yet the Ecclesiastical Court, has never-
 “ theless, always been considered as *final*
 and

“and *conclusive*.” And (adds he) “ altho’ the Grand Jury have weakly found a true Bill, instead of throwing out the Indictment as groundless and illegal; yet these great Authorities are certainly such a Bar to the Prosecution, as must render the Trial before the Lords, or any other Tribunal, illegal, unnecessary and unjust to the Ducheſs of *Kingſton*, and very alarming to the Public, who would ſuffer extremely, by weakening the Authority of the Eccleſiaſtical Court, and thereby eſtabliſhing a Precedent for a ſecond Trial for the ſame Offence.”—And, indeed, in our Opinion, it is not upon the Ground of *Colluſion*, but on that of the *Competency*, or *Incompetency* of the Eccleſiaſtical Court to judge and determine in theſe Matters, that the Merits of the Cauſe, as well as the Propriety of a Trial before the Houſe of Lords muſt depend: If this Court be *not* competent to judge ſuch Matters as are brought before it, then are its Deciſions *vague*, then is its Inſtitution

N

uſe-

useless; but if it be *competent*, then it appears to the Eye of Reason, that the Hon. *Elizabeth Chudleigh*, being by that Court declared a *Spinster*, after the alledged Marriage with Mr. *Hervey*, then she offended not the Laws of her Country, by being espoused to the Duke of *Kingston*, and she being his Widow and lawful Executrix, should remain without farther Trial, in Possession of the Fortune bequeathed her, and the Title of Duchefs of *Kingston*.

F I N I S.

